

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KEVIN SMITH-EL, #166532,

Petitioner,

v.

Case No. 07-12979
Honorable Anna Diggs Taylor

JERI ANN SHERRY,

Respondent.

**ORDER DENYING PETITIONER'S MOTION FOR JUDGMENT
BASED ON THE PLEADINGS—A DEFAULT JUDGMENT**

Petitioner Kevin Smith-El, a state prisoner, presently confined at the Chippewa Correctional Facility in Kincheloe, Michigan, has filed a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. This matter is before the Court on Petitioner's Motion for Judgment Based on the Pleadings (Docket # 11), or otherwise known as a Default Judgment. Petitioner seeks a default because he alleges that Respondent has failed to timely answer the habeas petition. This contention is without merit.

On July 19, 2007, this Court issued an order requesting Respondent to answer Petitioner's petition for writ of habeas corpus by January 25, 2008 (Docket # 4). Respondent filed its answer on January 23, 2008 (Docket # 10). Thus, Petitioner's motion is moot.

Furthermore, a default judgment is generally unavailable in a habeas corpus proceeding on the ground that government officials failed to file a timely response to the petition. *See, e.g., Allen v. Perini*, 424 F.2d 134, 138 (6th Cir. 1970). Accordingly,

IT IS ORDERED that Petitioner's motion is **DENIED WITH PREJUDICE**.

DATED: February 14, 2008

s/ Anna Diggs Taylor
ANNA DIGGS TAYLOR
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Order was served upon counsel of record via the Court's ECF System to their respective email addresses or First Class U.S. mail disclosed on the Notice of Electronic Filing on February 14, 2008.

Kevin Smith, #166532
Chippewa Correctional Facility
4269 W. M-80
Kincheloe, MI 49784

s/Johnetta M. Curry-Williams
Case Manager